

Draft Minutes of the
Delta Protection Commission
Thursday, January 27, 2005

1. Call to Order/Roll Call

Vice Chairman Ferguson called the meeting to order at 6:35 p.m.

Present: Vice Chairman Ferguson, Curtis, Kelly, McGowan, Nottoli, Reagan, Sanders, Scriven, Shaffer, Sturm, van Loben Sels, and Wilson.

Absent: Commissioners Cabaldon, Calone, Johnson, Piepho, Ornellas and Simonsen.

2. Public Comment

There were no public comments.

3. Minutes of the Last Meeting

Commissioner McGowan moved approval of the minutes; Commissioner Daniel Wilson seconded. The minutes were approved unanimously.

4. Chairman's Report

Vice Chairman Ferguson welcomed new Commissioners Mike Scriven, representing the Central Delta Water Agency and Mike Reagan, representing Solano County Board of Supervisors. Vice Chairman Ferguson announced that new Commissioner Mary Piepho, representing Contra Costa Board of Supervisors and Arne Simonsen, representing the Association of Bay Area Governments, were unable to attend the meeting. He announced that San Joaquin County Council of Governments was holding a meeting to appoint a member to the Commission.

The next meeting of the Delta Protection Commission is scheduled for Thursday, March 24, 2005, 6:30 p.m., Jean Harvie Community Center. Vice Chairman Ferguson added that handouts included a committee roster, 2005 meeting schedule, and updated Commissioner Roster.

5. Commissioner Comments/Announcements

Commissioner Curtis announced that the Department of Fish and Game has published a new Striped Bass fishing map. The map is designed to assist striped bass fishermen to fish in the Delta and contains the marinas, launching sites and background information on the fish. Commissioner Curtis asked that anyone interested in the map e-mail him directly.

6. Attorney General's Report

Dan Siegel had no report.

7. Executive Director's Report

Margit Aramburu distributed handouts:

- Pending Projects Memo
- Letter to Budget Committee

- Department of Water Resources White Paper: *“Flood Warnings: Responding to California’s Flood Crisis”*. Ms. Aramburu recommended that this paper be brought before the Ag. Committee and the full Commission for discussion.
- SF Chronicle articles on Delta Levees “Lack of Funding Imperils Aging System”

Ms. Aramburu reported that she and Commissioner McGowan met with the City of Elk Grove City Attorney and Planning staff to receive a briefing on Elk Grove's planning area. She said she asked for additional information on the City’s planning policies; however, she has yet to receive the information. She said that in the absence of the information, she would agendize discussion on the City for the March 25th meeting and send a letter to the City outlining issues raised.

Ms. Aramburu announced that the Delta Protection Commission is not on the list of Boards and Commissions the Governor wants to eliminate. She reported that last year Senator Michael Machado and Assemblymember Lois Wolk each carried a bill that dealt with membership of the Commission and a Delta Conservancy. Both bills passed through the Legislature; however, Assemblymember Wolk’s bill was amended. She said the Governor vetoed both bills and in his veto message said he wanted to work with both Legislators to develop an administration bill to address issues.

The recreation study is underway with the consultant (The Dangermond Group) on board. Phase I must be completed by June 2005, so the Commission can review the preliminary product at the May 2005 meeting. The Recreation Citizens Advisory Committee will take an active role in the project and a series of dates has been set up for the first Wednesday in March, April, May and June to complete the planning process. The Commission is still seeking funds for the land-based portion of the study.

The Commission is jointly applying for a \$250,000 grant with Ducks Unlimited and UC Davis to help study the impacts of development in the Secondary Zone on the resources of the Primary Zone. The application was filed through the CALFED Science Grant Program. The grant will enable Ducks Unlimited to generate a GIS mapping and analytical tool to identify the resources and impacts of development on the Primary and Secondary Zones.

The CALFED Bay Delta Public Advisory Committee will set up a levees workshop. The Commission; the Reclamation Board; and the North, Central, and South Water Agencies will help to sponsor the Event. The event will take place at the University of the Pacific; no date has been set.

The funds for the Delta Water Quality Management Plan have been granted to the Contra Costa Water Agency, Solano County Water District and City of Stockton and that planning effort is underway.

Commissioner van Loben Sels suggested that more participation is needed on the Recreation Citizens Advisory Committee by owners and operators of marinas. He asked if there was a way to increase participation now that funding was in place. Ms. Aramburu said she would pursue additional outreach to those people and have the information posted on a website that will be linked to the Commission’s website.

8. CALFED Update

Ron Ott, CALFED staff, updated the Commission:

Finance: The CBDA, (at its December meeting with BDPAC) approved the CALFED finance Plan framework; the framework will guide the financing of the CALFED Program for the next ten years. On January 19, 2005, Authority staff held a public workshop to receive early input in a scoping session on options for ERP fees and State funding. The final finance plan will be available on the Web by the end of January 2005.

EWA Science Review: The fourth annual meeting to review the EWA convened on November 8-10, 2004 at the CBDA offices in Sacramento. The EWA Technical Review Panel was assembly for the fourth and final time. The fourth year review focused on the first four years as a whole and proposals for a long-term EWA.

Levees Integrity Program: As part of a reorganization of the Water Management and Regional Coordination Branch within CBDA, Sergio Guillen will be working full time support the program.

New Water Management Science Board: The Water Management Science Board will have its first meeting at CBDA January 26-27, 2005. Topics of discussion include water supply, drinking water quality, water use efficiency, levee and environmental programs and issues. The board will be briefed on the relationships among the CALFED ISB, the ERP Science Boards and the EWA panel.

Commissioner Shaffer asked which Science Board was working on water quality issues and asked if the water quality briefing was put in a regulatory context. Mr. Ott responded that no, the briefing was given by the BDPAC co-chairs of the water quality subcommittee. Mr. Ott replied that evaluation of the CALFED Water Quality Program will be addressed by the Water Management Independent Science Board.

Commissioner van Loben Sels asked who would have the responsibility to assign the priorities to the \$90 million to fund levee improvements. Mr. Ott responded that the Delta levees component of HR 2828 would be handled by the Army Corps of Engineers.

9. Reorganization of Committees; Expand Agriculture Committee to Include Levee Committee

Ms. Aramburu reported that the Commission has been charged with reviewing its background reports and making recommendations to update its Regional Land Use Plan. She recommended that the Commission modify the current membership of the Ag. Committee to create an Ag./Levees Committee.

Vice Chairman Ferguson convened the public hearing.

Peggy Bohl, Clarksburg, stated that as the DPC expands the responsibility of the Ag. Committee into levee issues, it should look at existing populations in the Primary and Secondary Zones that could be at risk because of deteriorating levees. She said that flood control levees, particularly project levees, form a chain of protection along the Sacramento River. Upstream levees that are old and poorly maintained could place downstream communities at risk unless they are brought

up to acceptable standards by DWR and the Army Corps. of Engineers. She said this should be addressed before Delta communities could grow and the matter was vital to public/private interests. She further stated the solutions to the problems are regional and was very pleased that the Commission was taking on the matter.

Vice Chairman Ferguson closed the public hearing.

Commissioner Curtis said that in expanding the focus of the Committee, it should make sure the appropriate people are represented as the Commission deals with the broader issues. Ms. Aramburu responded that any Commissioner could participate.

It was moved by Commissioner van Loben Sels and seconded by Commissioner Wilson to combine the Ag. subcommittee and the Levee subcommittee. Motion was approved unanimously by voice vote.

10. Draft Report on Changes to Land Use in the Primary Zone: 1993-2004

Ms. Aramburu reported that the 2004 budget bill requires that the Commission prepare a report that identified the land use changes in the Delta. She provided a report that summarized the total number of projects the Commission has reviewed since 1993 and asked for input. She said she would bring back a final report in March 2005 to forward to the Legislature to address the issues that were raised.

Commissioner van Loben Sels asked if the total number of acreage and non profit ownership (8,500 acres) was included in the report. Ms. Aramburu responded that only ownership was listed in the report to differentiate between ownership and land use change. Commissioner van Loben Sels said he would like to see lands acquired by non-profit and public entities and if that land use has or is expected to change, added to the report.

Commissioner Shaffer asked Commissioner van Loben Sels if he would like to see property tax status included in the information. Commissioner van Loben Sels said that the tax base for Delta communities has been limited because development cannot occur in the Primary Zone. Ms. Aramburu said that she would add tax information in the report, in addition to ownership.

11. Report from Delta Land Use Impacts Committee Regarding Review of Projects in the Primary and Secondary Zones

Ms. Aramburu reported that the Delta Land Use Impacts Committee looked at all the projects in the Primary and Secondary Zones since 1993 and how the Commission responds to and participates in decisions in the Primary and Secondary Zones. She said there have been 600+ projects over the ten years of the Commission's existence. The Committee pointed out that there should be broader understanding about the Commission's role and responsibility in the Delta community, it should bring more projects before the Commission for its review and comment, and the Commission should comment on projects based on CEQA and the Land Use Plan. She stated that the Committee recommended sending a letter commenting on all major projects in the Primary Zone—including projects directly appealable to the Commission. Additionally, the Committee recommended that the Commission send a standard letter to all minor projects in the Primary Zone that are consistent with existing zoning/general plan designation and the Delta Protection Act—which will be listed in the pending projects memo. She reported that the Committee recommended that projects in the Secondary Zone should focus review/comment on

a “zone of concern”, a 1,000 foot wide border adjacent to the Primary Zone boundary. She also said the Committee recommended broadening the basis for comments from the policies of the Delta Protection Act to include CEQA-type issues.

Commissioner Sanders provided written comments that he asked to be incorporated into the comment letters.

Dan Siegel commented that he was concerned because under the proposed recommendations, the Commission would be commenting on projects that might eventually come before the Commission in its appellate, quasi-judicial capacity. He said that Commission should be mindful that if it appears to make a commitment to the consistency/inconsistency between a project and the Delta Protection Act, the Commission might taint its ability to provide a fair hearing if that project comes before it on appeal. Mr. Siegel referenced a case that stated that “a fair hearing can be denied if it appears a board/commission has a commitment to a result”. He said the Commission could provide feedback on a project, but should keep in mind that if it reviews a project outside the context of quasi-judicial appeal, it should be careful not to make a commitment as to whether a project is consistent/not consistent with the Delta Protection Act until all evidence is heard.

Commissioner McGowan asked if the Commission would be undermining its appellate process if it wanted to advocate or comment on policies concerning projects. Mr. Siegel responded that staff could use forceful language and raise concerns in its comment letters, but the letters should indicate that they are staff comments only. If a project does come before the Commission on appeal, the Commission must be open to hearing and considering the evidence presented.

Commissioner Wilson asked if the Commission crossed the line by considering the Clarksburg Sugar Mill project. Mr. Siegel responded that the Commission did not cross the line because it did not make commitment to a result.

Commissioner van Loben Sels asked Mr. Siegel if he saw any problems if the Commission could take an early response approach in the Secondary Zone. He said that planners do not want to hear from the Commission in the 11th hour—they would need to know early on what is acceptable in the zone of concern to plan their projects. Mr. Siegel said he saw no issue.

Commissioner Kelly stated that because the Commission has no jurisdiction in the Secondary Zone it could be very vocal if it has an issue with a project. She asked if Commissioners who serve in dual roles such as Board of Supervisors have to monitor their comments regarding proposals that are located within their jurisdictions in the Delta in order to avoid conflict. Mr. Siegel responded that it was a non-issue in the Secondary Zone.

Commissioner Nottoli asked if whether it would compromise his position as a member of the Board of Supervisors and Commissioner to be vocal in the Commission’s feedback. Mr. Siegel responded that one alternative to the situation would be for the Commissioner in question to excuse him/herself from the proceedings or have an alternate sit in their place.

Vice Chairman Ferguson asked if the draft letters clarified the Commission’s position on the matter. Ms. Aramburu responded that according to Mr. Siegel, she as staff can be aggressive in comment letters and can clarify the Commission’s position based on the Delta Protection Act and

the Resource Management Plan as long as the letters state that the comments are staff comments only and not the Commission's position. Mr. Siegel said he saw no problem with that scenario as long as it is clear the Commission has not directed staff to write the letters.

Vice Chairman Ferguson convened the public hearing.

Bill Geyer, Resource Landowners Coalition, commented that the Commission should draft the letters and add in the text of the comments a boilerplate disclaimer about the process used to comment on projects and the limitation of the comments. He said that Commissioner van Loben Sels was correct in that the comments should not come at the last minute and asked if the Commission had the ability to articulate their comments early on.

Vice Chairman Ferguson closed the public hearing.

Commissioner Kelly stated that Commission staff should meet with the counties because the Commission members may have a potential conflict—particularly if the project is in the Primary Zone.

Commissioner Shaffer stated that part of the CEQA process is the scoping of a project. He said that to get any comments early on, the Commission should let it be known that it is interested in the scoping of a project. He highlighted that there is a distinction between commenting on a CEQA document's adequacy vs. its appropriateness. He said that he believed it was appropriate for the Commission to comment on the adequacy of a CEQA document without having to comment on the appropriateness of the project, as it might come before the Commission in the quasi-judicial review process. He said that on page 7 of the checklist under Ag. Resource that topics such as water supply should be added to the comment letters, and make recommendations for encouraging the use of Land Evaluation and Site Assessment (LESA) as an evaluation tool to determine the impacts of projects on agricultural lands and resources.

Commissioner Sturm asked that the letters use the term preliminary staff review and that the letters should drop all reference to the Commission. Ms. Aramburu said that she would make those corrections.

Commissioner Sanders asked that the fourth letter in its entirety should be reviewed because it appears that the Commission proposes to review and provide comments on a project at its public meetings. He said the paragraph should be deleted as not to give the impression the Commission will take a position.

Commissioner Kelly commented that she found the letters to be indirect about what the project is about and what the Commission is trying to convey. She said that she felt the letters needed more elaboration because it seemed that the Commission was skipping steps.

It was moved by Commissioner van Loben Sels and seconded by Commissioner Wilson to adopt the draft comment letters with proposed changes. The motion was approved unanimously by voice vote.

12. Adoption of the Annual Report for 2004

Ms. Aramburu reported that Public Resources Code Section 29780 requires the Delta Protection Commission to submit an annual Report to the Governor and the Legislature by January 1 of each year. The draft report describes the actions of the Commission in 2004. Ms. Aramburu asked that the Commissioners provide any corrections or additional information that should be included in the report and asked that the Commissioner's adopt the draft 2004 Annual Report.

Vice Chairman Ferguson convened the public hearing. There were no public comments.

Vice Chairman Ferguson closed the public hearing.

Commissioner Nottoli moved approval of the draft 2004 Annual Report; Commission Shaffer seconded. The motion was approved unanimously by voice vote.

13. Staff Report on Acquisition of Land in Fee Title and Acquisition of Easements in the Primary Zone

Ms. Aramburu stated that each year staff updates the Commission on the acquisitions and easements in the Primary Zone. She reported that there was very little land acquired in the Primary Zone in 2004; in addition, there were very few conservation easements acquired. This item was for Commission information only. There were no questions or comments.

14. Support for State Parks in the Delta

Ms. Aramburu stated that there has been press coverage regarding the Department of Parks and Recreation's (DPR) plan for park futures in the Central Valley, including the Delta area. DPR has asked for suggestions and ideas from the public and Commission. She stated that several locations and properties in the Primary Zone are owned by State Parks but are not yet developed for public use because of lack of funding. She said that before any improvements can be made on State Park lands, DPR must develop and adopt general plans for its properties.

Commissioner Sturm stated that State Parks did projections on populations and trends for the next twenty years. He said the Department is studying the valley below 2000 feet and is looking into acquisition; development of existing facilities; funding; and natural, cultural, and recreational opportunities. He said that DPR is collecting data to seek input from public and private entities, local government, cities, the State, and non-profit organizations.

Commissioner McGowan asked what the Commission could do most to help the Delta and move the process along. Commissioner Sturm responded that any input would be helpful, particularly input on how to define the valley.

Commissioner van Loben Sels stated that his constituent base as a RD trustee has been very vocal and supportive of parks. He said he could support development of properties already owned by the State but not new acquisitions—that acquisitions should be at the bottom of the priority list for the Legal Delta. Commissioner van Loben Sels also said that DPR should become creative and partner with The Nature Conservancy through a Memorandum of Understanding to purchase the properties that are idle to increase recreation. Commissioner Sturm said he agreed with those comments.

Commissioner Sanders said it would be helpful for the Delta Recreation Citizens Advisory Committee to review the subject and offer comments.

Commissioner Curtis said that he has been involved in the Park's Plan in other parts of the valley and Delta area. He said that other State lands offer opportunities for recreational facilities and the Department of Boating and Waterway's study outlined the need for boat launch, restroom, and picnic facilities in the Delta. He said he agreed with Commissioner van Loben Sels that DPR should explore opportunities for partnerships with other State agencies, and not acquisition.

It was moved by Commissioner McGowan and seconded by Commissioner Wilson to direct staff to send a letter of support to the Department of Parks and Recreation, supporting focusing on existing properties and partnerships with other agencies. The motion was approved unanimously by voice vote.

15. Focus on Background Reports: Delta Environment, Recreation and Access, and Marine Patrol, Boater Education, and Safety Programs

Ms. Aramburu reported that the Commission would be working on updating three background reports (Environment, Recreation and Access, and Marine Patrol, Boater Education and Safety Programs). She said the Commission listened to a panel of experts who concluded that the focus of the updates should center on the key issues and not try to re-write the reports but check to see what issues have changed. She said that issues such as soils, geology, history of the Delta's formation, and habitats have not changed; however, subsidence and the physical environment of the Delta have changed and should be included in the updated information. She also said the focus should be on updating the findings and the policies of the report because the findings are the key points coming out of text and the policies are the legally enforceable portion of the plan which local governments must be consistent with. Ms. Aramburu said that the recommendations were important ideas, however they did not apply to local governments but to State and/or Federal agencies or to areas outside of the Primary Zone. She also stated that the Commission's recreation consultant, the Dangermond Group, would be updating the data using the Department of Boating and Waterway's study.

Commissioner van Loben Sels asked who would be paying for the updates to the reports. Ms. Aramburu responded that some of the recreation information would be updated by the current consultant, The Dangermond Group, and the remainder will be updated by Commission staff, as there are no funds for this task.

Vice Chairman Ferguson convened the public hearing.

Mr. Harry Moore commented that the Commission should contact the Coast Guard Auxiliary groups to request help in updating the Marine Patrol and Boater Safety report. He said that these groups have been existence for years, they have the boats available and have practiced boater safety.

Vice Chairman Ferguson closed the public hearing

16. Election of Officers

Ms. Arambur announced that every two years the Commission elects new officers. Patrick McCarty who served as Chairman for the past ten years, left the Commission at the end of 2004.

Commissioner Wilson moved and Commissioner Curtis seconded a motion to nominate Commissioner McGowan as Chairman of the Commission. Commissioner McGowan accepted the nomination and said that he felt there was a strong and important role for the Commission in the Delta. He said the Commissioner serves as the voice of reason that is the only entity dedicated preserving the Delta. The motion was approved unanimously by voice vote.

Commissioner Nottoli moved and Commissioner Wilson seconded a motion to nominate Vice Chairman Ferguson as Vice Chairman. Vice-Chairman Ferguson accepted the nomination. The motion was approved unanimously by voice vote.

17. Adjourn

The meeting was adjourned at 8:55 p.m.